

REMARKS/ARGUMENTS

Claims 1-31 remain in this application. Claims 2, 4, 9, 10, 12, 14, 16, 19, 20, and 31 have been amended.

Specification

The Specification has been amended to correct the informalities noted by the Office Action. No new matter has been added.

Drawings

Attached are replacement drawings to correct inconsistencies and add missing numerals as indicated by the Office Action. No new matter has been added.

Claim Objection

Claim 4 has been amended to replace the word “slidably” with “slidable” and the word “threadably” with “threadable.”

35 U.S.C. §112

Claims 2, 4, 9, 10, 12, 14, 16, 19, 20, and 31 have been amended to particularly point out and distinctly claim the subject matter that the Applicant regards as his invention.

35 U.S.C. §102(b)

Claims 1-6, 8, 10-16, 18-27, 29, and 31 were rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,935,127 to Border (“Border”). Independent claim is directed to an intramedullary nail that comprises a body defining an aperture therethrough. The aperture includes a first portion for cooperation with a “first fastener to provide dynamic fixation” and a second portion for cooperation with a second fastener “to provide static fixation.”

It is the Applicant’s belief that Border does not disclose such a nail. The nail in Border includes a slotted opening 17. The slotted opening 17 is filled with resorbable material that dissolves in the body over time, allowing for dynamic fixation of the screw. However, the slotted opening 17 does not include any portion that can be used with a fastener to create static fixation. The surgeon’s only option is to insert a screw that will move over time, which may not be the best option for the patient.

The present invention attempts to overcome this problem by having a portion of the aperture that is adapted to receive a fastener that will provide dynamic fixation, as

well as a portion of the screw that will provide static fixation. For at least this reason, claim 1 and its dependents are believed to be allowable over Border.

Independent claim 11 also includes the limitation that an aperture in the intramedullary nail includes “a first portion for cooperation with said first fastener to provide dynamic fixation” and “a second portion for cooperation with said second fastener to provide static fixation.” As discussed above, in reference to claim 1, Border does not disclose this feature. Therefore, claim 11 and its dependents are believed to be allowable over the prior art.

Independent claim 21 is a method claim and also includes the limitation that an aperture of the intramedullary nail includes “a first portion for cooperation with the first fastener to provide dynamic fixation” and “a second portion for cooperation with the second fastener to provide static fixation.” Therefore, for at least the reasons stated above in reference to claim 1, claim 21 is believed to be allowable over the prior art.

Independent claim 22 is directed to an intramedullary nail for use in orthopaedic surgery. As with the previous independent claims, claim 22 includes the limitation that an aperture in the nail includes “a first portion for cooperation with said first fastener to provide dynamic fixation” and “a second portion for cooperation with said second fastener to provide static fixation.” For the reasons stated above, in reference to claim 1, Border does not disclose this feature. Therefore, claim 22 and its dependents are believed to be allowable over the prior art.

35 U.S.C. §103

Dependent claims 7, 9, 17, 28, and 30 were rejected under 35 U.S.C. §103 as being unpatentable over Border in view of U.S. Patent 5,814,047 to Emilio et al. (“Emilio”). Dependent claims 7 and 9 depend from claim 1 and therefore include the limitation of an aperture of the nail including “a first portion for cooperation with said first fastener to provide dynamic fixation” and “a second portion for cooperation with said second fastener to provide static fixation.” As discussed above, in reference to claim 1, Border does not disclose this feature. Emilio also does not disclose this feature. Emilio is directed to a nail having “a plurality of equilaterally spaced piercing points and a plurality of flexible screws.” Abstract. There is no disclosure in Emilio of a single

aperture that is adapted to receive either a fastener for static fixation or a fastener for dynamic fixation. Therefore, dependent claims 7 and 9 are believed to be allowable over the combination of Border and Emilio.

Claim 17 is dependent on claim 11, and therefore, includes the limitation of an aperture of the nail including “a first portion for cooperation with said first fastener to provide dynamic fixation” and “a second portion for cooperation with said second fastener to provide static fixation.” As stated above, neither Border nor Emilio disclose this limitation. For at least this reason, Claim 17 is believed to be allowable.

Claims 28 and 30 are dependent on claim 22, and include the limitation of an aperture of the nail including “a first portion for cooperation with said first fastener to provide dynamic fixation” and “a second portion for cooperation with said second fastener to provide static fixation.” Because neither Border nor Emilio disclose this limitation, claims 28 and 30 are believed to be allowable.

Conclusion

For the above-described reasons it is respectfully submitted that the rejections to the claims have been overcome and that all remaining claims, namely claims 1-7 and 9-20 as well as new claims 21-24 are currently in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully Submitted,

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Appendix